

BEFORE THE  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Second Amended  
Accusation Against:

REX ALAN HOLLAND, P.T.

Respondent.

Case No. 2002-07-1052

OAH No. N2002070535

**PROPOSED DECISION**

On October 1, 2002, in Sacramento, California, Ann E. Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Mara Faust, Deputy Attorney General, represented complainant.

Denny R. Forland, Attorney at Law, represented respondent Rex Alan Holland.

Evidence was received, the record was closed and the matter was submitted on October 1, 2002.

**FACTUAL FINDINGS**

1. On April 30, 2002, complainant and petitioner Steven K. Hartzell, made and filed the Accusation in his official capacity as the Executive Officer of the Physical Therapy Board of California ("Board"), Department of Consumer Affairs.

2. The Board issued Physical Therapist License Number PT 21115 to Rex Alan Holland ("respondent") on September 21, 1995.

3. On September 27, 2000, respondent was convicted in Butte County Superior Court, on his admission of guilt, to one count of a violation of Penal Code section 243 (e) [spousal battery], a misdemeanor. The circumstances surrounding the conviction were that

on August 25, 1999, respondent was at his estranged wife's home fixing his car in the driveway. He wanted to talk with her in the house and she refused. He was aware that she had a restraining order against him and that he could not approach her. Nevertheless, when she came out of the house he followed her. He yelled at her, grabbed her by the neck, forced her head onto the hood of a car and held her there. He released her when she started screaming.

4. Respondent was sentenced to serve ten days in jail and to serve forty-eight months of formal probation. As a condition of probation, respondent was required to participate in a three hour a week, 52-week domestic violence program. On October 24, 2001, respondent had completed the domestic violence program and his probation was converted from formal to informal probation. On September 11, 2002, respondent's probation was terminated and his conviction dismissed under Penal Code section 1203.4.

5. The crime of spousal battery is substantially related to the qualifications, functions and duties of a physical therapist. A physical therapist works regularly in situations where his temperament is challenged. The physical therapist's role is to restore function to patients by guiding them with exercise and movement and by applying hands on treatment modalities to the body. He works "hands on" with the elderly, Alzheimer's patients, patients with chronic or acute pain; patients with head injuries and patients with confusion or dementia. These patients can become stubborn, aggressive and combative. They are vulnerable to abuse because of their isolation and because of their physical and mental limitations. An individual who has lost his temper and assaulted another poses a risk to these patients. The fact that many physical therapists work unsupervised in the patient's home or alone with the patient adds to the patient's risk.

6. Here, respondent lost his temper when his wife would not speak further with him. He did not control his temper, even when he was aware that he was violating a restraining order. Respondent was over 210 pounds and over 6 feet tall, while his estranged wife was 5 foot 4 and 145 pounds. Despite this disparity in size, respondent grabbed her neck and forced her against a car. This was a dangerous maneuver, which could have caused her substantial injury. Respondent's conduct shows that he has a problem with anger management and with impulse control, character traits which are crucial to the practice of physical therapy.

7. In order to determine if respondent is presently fit for licensure, the trier of fact must consider the licensee's conviction and any factors introduced in justification, mitigation, aggravation and rehabilitation. "The licensee . . . should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation." *Arneson v. Fox* (1980) 28 Cal.3d 440, 449; *Brandt v. Fox* 90 Cal.App.3d 737 at p. 747.

8. Respondent offered in mitigation, testimony that the spousal abuse incident was isolated and arose from a unique set of circumstances, which cannot reoccur. He testified that he had been suffering a situational depression arising from the break up of his

marriage and the death of his parents, several years earlier. Respondent admitted that there were four or five incidents of hitting, yelling and shoving between him and his wife. However, the evidence is persuasive that respondent was repeatedly abusive toward his wife and others for a long period of time and that the divorce was not the principal impetus for his aggressive behavior.

Respondent's ex wife submitted a statement to police officers in connection with his spousal abuse arrest. The statement details a lengthy period of spousal abuse, commencing in January of 1997, long before she began divorce proceedings. According to the ex- wife's statement, respondent was having difficulty keeping employment because of his temper.

Respondent was admitted to an in house treatment program at Chico Community Hospital. He was diagnosed with major endogenous depression with manic episodes. He was in hospital eight or nine days. Respondent testified that he was only situationally depressed, and that the diagnoses of severe depression with manic episodes was a preliminary diagnoses which turned out not to be correct.

The spousal abuse arrest was in August of 1998. The arresting officers noted that respondent was acting oddly and had him tested for drug and alcohol intoxication. Testing was negative. Respondent was arrested on September 18, 1998 for public intoxication. Then, on March 12, 2000, respondent was arrested for battery upon his brother Fred Holland. A statement of Fred Holland, made to arresting police officers, was made a part of the record. Rex Holland stated that respondent had entered his garage and tried to take a compressor. Fred Holland refused to let him have it and asked respondent to leave. Respondent refused to leave. Fred Holland called 911 and respondent attacked and beat him because he had called the police. Fred Holland stated that respondent had been diagnosed as a volatile bi- polar and that another brother had secured a restraining order against him.

Respondent glosses over the attack on his brother and calls it a "fight". He testified that the two are best friends and that he got the worst of the fight. Respondent also characterizes his interaction with his ex- wife as "fighting" and indicates that she attacked him too.

9. The Accusation does not allege as grounds for license discipline; the pattern of abuse toward the ex wife, the 1998 arrest, or the 2000 arrest. However, these incidents were considered to the extent that they shed light on the veracity of respondent's claim that the spousal abuse incident was isolated and out of character for him. These incidents were also considered in assessing the respondent's claim that he has rehabilitated himself and in assessing the nature and extent of rehabilitative effort respondent should show in order to assure a trier of fact that he has rehabilitated himself.

10. Respondent's spousal abuse conviction, his in-patient mental health diagnosis and treatment, and the statements of his ex-wife, brother, and arresting officers, paint a picture of an individual with mood and anger management problems. Additionally, there was something quite unnerving about respondent's testimony, his demeanor at hearing, and

his written statement to the Board. When respondent described the events leading up to his arrests and conviction, he seemed to lack a connection to the events he described. He detoured into detailed and romantic descriptions of the events. These descriptions had a fantasy, storybook quality. Respondent's demeanor created some doubt in the trier of fact as to respondent's mental competency. The evidence respondent offered in rehabilitation did little to dispel this unease.

11. As evidence of rehabilitation, respondent argued that he has completed the terms and conditions of probation, including his fifty-two week domestic violence program. He was released early from probation and his conviction was set aside on September 12, 2002. Respondent's compliance with the terms and conditions of probation is a factor showing rehabilitation, but it does not carry the weight respondent suggests. Criminal probation carries a threat of a harsher sentence, should one fail to comply with terms and conditions. Compliance with court ordered terms and conditions of release "does not necessarily prove anything but good sense." *Windham v Board of Medical Quality Assurance* (1980 2<sup>nd</sup> Dist.) 104 Cal.App. 3d 461, 473.

Respondent submitted a letter from his physician and friend, James S. Nagel M.D. Dr. Nagel had prescribed antidepressants and mood stabilizers to respondent for an unspecified period of time before September of 2000. He wrote to say that respondent no longer needs medication to treat depression or to stabilize his mood. Dr. Nagel's opinion on respondent's present psychological state carries little weight. He is a close friend of respondent and is not a psychiatrist. He does not show any expertise in mood disorders or depression. In terminating respondent's treatment, he relied solely on respondent's statements that he felt fine.

Respondent testified that he participated in counseling through "Crossroads" which was administered through a local hospital. He submitted no supporting evidence and no evidence from a specialist in mental health issues attesting that he successfully completed counseling. He also does not support his claim that he was misdiagnosed with major endogenous depression with manic episodes. Rather, he stated in his written statement to the Board, in bold type, that he had been given this diagnosis.

12. Respondent did not submit any evidence from his brother to show that they had been mutual combatants and were now very close, as he testified. He did not support his testimony that he has an excellent work history, with references from employers. He did not demonstrate that he has a stable work history. He testified that he has worked as a physical therapist since 1995. He worked at Oroville Hospital and oversaw eleven therapists. He submitted no evidence verifying his employment or explaining his departure from Oroville Hospital.

Respondent submitted letters from a nurse who worked with him the last year and a half, an occupational therapist who has worked with him, and two friends, all attesting to his good work and his even temperament. However, it is impossible to tell from these

documents where and how long respondent has been employed and whether his superiors hold him in high regard.

13. Respondent has been working on a per diem basis, on call part time. He testified that he chooses to work in this manner in order to allow himself time to reflect on his interpersonal growth. Respondent testified that he has been a member of a men's church group which focuses on spiritual growth. Between this group and physical exercise, he testified that he is able to keep his mood normal.

14. Respondent testified that there is no risk of relapse to his aggressive behavior. Relapse is "not conceivable" because he has been through the court's domestic violence program. He testified that there is no risk of relapse because he has done "ongoing work" and is "personally committed to the strongest interpersonal growth and accountability".

Respondent argued that his past aggression never 'spilled over' to his patients. However, he had only been treating patients for a little under a year when he began abusing his wife. Since that time, he changed employment and works part time, independently. Although there is no record of patient abuse, respondent did not present a lengthy and clear record of stable relationships with his employer and patients.

15. It has been established that the reasonable costs of investigating and prosecuting this matter were \$1,120.

## LEGAL CONCLUSIONS

1. Respondent is subject to disciplinary action under Business and Professions Code section 2660 (d) in that while a licensed physical therapist, he was convicted of a crime which is substantially related to the qualifications, functions or duties of a physical therapist, as set forth in Factual Findings 3 through 6, inclusive.

2. Cause exists to revoke respondent's license as set forth in Factual Findings 3 through 14, inclusive.

3. The evidence in rehabilitation was weighed and balanced against the gravity of respondent's conduct, as set forth in Factual Findings 3 through 14, inclusive. Respondent has provided some evidence that he is controlling his anger and depression. However, the gaps in respondent's evidence of rehabilitation and the risks a relapse would pose to the vulnerable patient population mandate that, if he retains his license, he do so under conditions designed to protect the public.

4. Pursuant to Business and Professions Code section 2661.5, the Administrative Law Judge may direct any licensee found guilty of unprofessional conduct to pay to the Board a sum not to exceed the actual and reasonable costs of investigation and prosecution of

the case. As set forth in Factual Finding 15, the actual and reasonable costs of investigating and prosecuting this matter have been established as \$1,120.

## ORDER

The respondent's license shall be revoked, with the revocation stayed, thirty days of suspension, three years of probation; on the following terms and conditions;

### *Cost Recovery*

The respondent will be ordered to reimburse the Board the actual and reasonable investigative and prosecutorial costs incurred by the Board. The respondent will normally be ordered to make the reimbursement within 30 days from the effective date of the decision unless the Board agrees in writing to payment by an installment plan. Failure to make the ordered reimbursement, or any agreed upon payment, may constitute a violation of the probation order.

### *Obey All Laws*

Respondent shall obey all federal, state and local laws, and statutes and regulations governing the practice of physical therapy in California.

### *Compliance With Orders of a Court*

The respondent shall be in compliance with any valid order of a court. Being found in contempt of any court may constitute a violation of probation.

### *Quarterly Reports*

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

### *Probation Monitoring Program Compliance*

Respondent shall comply with the Board's probation monitoring program.

### *Interview With the Board or its Designee*

Respondent shall appear in person for interviews with the Board, or its designee, upon request at various intervals and with reasonable notice.

### *Notification of Probational Status to Employers*

The respondent shall notify all present or future employers of the reason for and the terms and conditions of the probation by providing a copy of the accusation (statement of issues) and the decision and order (or stipulated settlement) to the employer. The respondent shall obtain written confirmation from the employer that the documents were received. If the respondent changes, or obtains additional employment, the respondent shall provide the above notification to the employer and submit written employer confirmation to the Board within 10 days. The notification(s) shall include the name, address and phone number of the employer, and, if different, the name, address and phone number of the work location.

### *Notification of Change of Name or Address*

The respondent shall notify the Board, in writing, of any and all changes of name or address within ten days.

### *Restriction of Practice - Temporary Services Agencies*

Respondent may only practice or perform physical therapy in a supervised structured environment. The respondent shall not work for a temporary services agency or registry.

### *Prohibited Use of Aliases*

Respondent may not use aliases and shall be prohibited from using any name which is not his/her legally-recognized name or based upon a legal change of name.

### *Work of Less Than 20 Hours Per Week*

If the respondent works less than 192 hours in a period of three months, those months shall not be counted toward satisfaction of the probationary period. The respondent shall notify the Board if they work less than 192 hours in a three-month period.

### *Tolling of Probation*

The period of probation shall run only during the time respondent is practicing within the jurisdiction of California. If, during probation, respondent does not practice within the jurisdiction of California, respondent is required to immediately notify the probation monitor in writing of the date that respondent's practice is out of state, and the date of return, if any. Practice by the respondent in California prior to notification to the Board of the respondent's return will not be credited toward completion of probation. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled.

### *Violation of Probation*

If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against

respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

#### *Cease of Practice Due To Retirement, Health or Other Reasons*

Following the effective date of this probation, if respondent ceases practicing physical therapy (or performing as a physical therapist assistant) due to retirement, health or other reasons respondent may request to surrender his/her license to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, the terms and conditions of probation shall be tolled until such time as the license is no longer renewable, the respondent makes application for the renewal of the tendered license or makes application for a new license.

#### *Completion of Probation*

Upon successful completion of probation, respondent's license or approval shall be fully restored.

#### *Written Exam On the Laws & Regulations Governing the Practice of Physical Therapy*

Within 90 days of the effective date of this decision, respondent shall take and pass the Board's written examination on the laws and regulations governing the practice of physical therapy in California. If respondent fails to pass the examination, respondent shall be suspended from the practice of physical therapy until a repeat examination has been successfully passed.

#### *Practice of Physical Therapy While On Probation*

It is not contrary to the public interest for the respondent to practice physical therapy under the probationary conditions specified in the disciplinary order.

#### *Restriction of Practice- Home Care*

The respondent shall not provide physical therapy services in a patient's home.

#### *Restriction of Practice- Solo Practice*

The respondent shall be prohibited from engaging in the solo practice of physical therapy.

#### *Restriction of Practice - Graveyard Shift*

The respondent shall be prohibited from working a graveyard shift or any shift in which there is no other physical therapist practicing.



*Restriction of Practice - Prohibition of Self Employment Or Ownership*

Respondent may not be the sole proprietor or partner in the ownership of any business that offers physical therapy services. Respondent may not be an officer of any corporation that offers or provides physical therapy services. Respondent may not employ physical therapists, physical therapist assistants or physical therapy aides.

*Psychiatric/Psychological Evaluation and Treatment*

Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a psychiatric/psychological evaluation (and psychological testing, if deemed necessary) by a Board-appointed psychiatrist/psychologist, who shall furnish an evaluation report to the Board or its designee. The respondent shall pay the cost of the psychiatric/psychological evaluation.

If respondent is required by the Board or its designee to undergo psychiatric/psychological treatment, respondent shall within 30 days of the requirement submit to the Board for its prior approval the name and qualifications of a psychiatrist/psychologist of respondent's choice. Respondent shall undergo and continue psychiatric/psychological treatment until further notice from the Board or its designee. Respondent shall have the treating psychiatrist/psychologist submit quarterly status reports to the Board or its designee indicating whether the respondent is capable of practicing physical therapy safely.

Respondent shall not engage in the practice of physical therapy until notified by the Board or its designee of its determination that respondent is mentally fit to practice safely.

*Probation Monitoring Costs*

All costs incurred by the Board for probation monitoring during the entire period of probation shall be reimbursed by respondent. Respondent will be billed at least quarterly. In addition to the filing of an Accusation or the issuance of an administrative citation, the filing of criminal charges shall be sought when appropriate.

Dated: \_\_\_\_\_

\_\_\_\_\_  
ANN E. SARLI  
Administrative Law Judge  
Office of Administrative Hearings

**BEFORE THE  
PHYSICAL THERAPY BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation	)	Case #: 1D 2001 62808
Again	)	
	)	
REX ALAN HOLLAND	)	
	)	
	)	
_____	)	

The foregoing Proposed Decision, in case number 1D 2001 62808, is hereby adopted by the Physical Therapy Board, Department of Consumer Affairs, State of California.

This decision shall become effective on the 26 day of December, 2002.

It is so ordered this November 26, 2002 .

Original Signed By  
Ellen Wilson, P.T., President  
Physical Therapy Board  
of California